



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 18468283

Date: SEP. 28, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a mechanical and aerospace engineer, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this employment-based, “EB-2” immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner’s burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual’s services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion,<sup>1</sup> grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, regarding substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign

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<sup>1</sup> See also *Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>2</sup>

## II. ANALYSIS

The record demonstrates that the Petitioner earned a Ph.D. and a master's degree in aerospace engineering from the [REDACTED] in 2015 and 2011, respectively. The record also indicates that the Petitioner attained two foreign specialized engineering degrees prior to completing his graduate work in the United States. Therefore, the record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

Immediately prior to filing, the Petitioner was employed as a senior engineer for [REDACTED] and in this role he performed aerodynamics and [REDACTED] engineering services as a contractor for [REDACTED] in [REDACTED] Florida. He indicates that he intends to continue his work in the field of mechanical and aerospace engineering in the United States with a specific focus in [REDACTED], which he explains is a branch of [REDACTED] that uses numerical analysis and data structures to analyze and solve problems that involve [REDACTED]

### A. Substantial Merit and National Importance of the Proposed Endeavor

The record indicates that the Petitioner's proposed endeavor as a mechanical and aerospace engineer specializing in [REDACTED] is to conduct fundamental studies of [REDACTED] physics for special applications, develop numerical tools and methods for addressing general and special challenges, conduct root cause analysis to identify and resolve aerothermal problems and [REDACTED] interactions, and design and analyze devices and components with [REDACTED] before and after experiments. He indicates that his work will provide greater information and further an understanding in the field of [REDACTED] by promoting multi-disciplinary interactions and applications of various methods and technologies based in [REDACTED] research. The Petitioner explained the manner in which his studies would examine the overlap of various technologies, noting the relationship between aircraft wings and [REDACTED] and the manner in which aircraft aerodynamics can lead to the production of aerodynamically fuel efficient automobiles.

The Petitioner demonstrated that the benefit of his proposed research has broader implications for the field, as the results are disseminated to others in the field through scientific journals and conferences. The record also contains a letter from an aerospace engineer at NASA attesting to the key role of [REDACTED] in the field of space exploration, as well as reports and articles published by various government agencies pertaining to plans for future application of [REDACTED] research and discussing military and commercial benefits associated with [REDACTED] engineering. The Director determined that the Petitioner's proposed endeavor had substantial merit and national importance, and we agree with that determination.

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<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

## B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of his curriculum vitae, academic credentials, published work, peer review activity, memberships, awards, offers of employment, and evidence of the salary he commanded while employed by [REDACTED]. The Petitioner also offered letters of support discussing his graduate research and professional accomplishments.

The Petitioner contends on appeal that his education, research experience in aerospace engineering, published articles, and recommendation letters from others in the field demonstrate that he is well positioned to advance his proposed endeavor. For the reasons discussed below, the record supports the Director's determination that the evidence is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research under *Dhanasar*'s second prong.

The Director determined that the numerous letters of reference submitted by the Petitioner did not sufficiently illustrate a record of success in his proposed endeavor, noting that they did not provide specific examples or supporting evidence that his work had affected practices in the field of [REDACTED] and aerospace engineering, or otherwise constituted a record of success in the field. On appeal, the Petitioner contends that the Director's conclusion was inappropriate and misguided, and asserts that the letters did in fact contain specific examples of the Petitioner's accomplishments and record of success in the field.

The letters submitted in support of the petition discuss the Petitioner's graduate work while at the [REDACTED] as well as his professional accomplishments while working as a contractor for Siemens.<sup>3</sup> For example, regarding the Petitioner's Ph.D. work in aerospace engineering, [REDACTED] Regents Professor and Associate Chair of the School of Engineering at [REDACTED] stated that he supervised the Petitioner's work and that his dissertation [REDACTED]. He further stated that the Petitioner ultimately "invested himself in allying Aerospace Sciences to the benefit of [REDACTED] engineering," and in doing so, he developed numerical models that respond better to the specific conditions of [REDACTED] operation." While [REDACTED] indicated that the Petitioner's investigations "made great use of advanced [REDACTED], he did not provide specific examples indicating that this system has been utilized in the fields of aerospace or [REDACTED], or otherwise constitutes a record of success in the field.

With respect to the Petitioner's work relating to modeling and understanding the [REDACTED] in various gas turbine diffusers as an intern for [REDACTED], [REDACTED] Principal Research Engineer for [REDACTED] [REDACTED] stated that he supervised the Petitioner's work for several months in 2013 as [REDACTED] technology lead for aerodynamics. [REDACTED] stated that the project on which the Petitioner worked involved "collecting information on the exhaust diffusers of several models of gas turbines, creating [REDACTED] models of the [REDACTED] these diffusers, and building understanding of the differences in their aerodynamic performance." He noted that the quality of the Petitioner's work on this project resulted in a full-time contractor position at [REDACTED] where the Petitioner worked to improve the aerodynamic efficiency of the gas turbine exhaust diffusers. Although [REDACTED]

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<sup>3</sup> While we discuss a sampling of these letters, we have reviewed and considered each one.

indicated that the aerodynamic efficiency of the gas turbine diffusers on which the Petitioner worked would ultimately play a role in determining the efficiency of natural gas-fired power plants, and that the quality of the turbine designs will have a direct effect on the profitability of the respective power plants, he did not offer examples of how the Petitioner's gas turbine diffusers had been implemented, utilized, or applauded in any such power plants or in the field of aerodynamics.

In addition, [redacted] a research aerospace engineer with NASA [redacted] indicated that "NASA expresses great interest in the endeavor as proposed by the [Peticioner]," noting that NASA utilizes [redacted] for advances in aeronautics for both civilian and military applications. While this letter acknowledges the value that [redacted] research will have on aerospace applications, there is no specific reference or discussion of the Petitioner's personal research or accomplishments in the area of [redacted] as the pertain to the aerospace industry. The letter did not provide specific examples indicating that the Petitioner's research in the field of [redacted] has affected the aerospace industry, has served as an impetus for progress or generated positive discourse in his field, or otherwise represents a record of success or progress rendering him well positioned to advance his proposed endeavor.

The Petitioner also submitted an expert opinion letter from [redacted] Director of [redacted] [redacted] at the [redacted] who provided a general synopsis and overview of the Petitioner's academic achievements and career accomplishments. [redacted] asserted that the Petitioner's education and experience in the industry, coupled with the fact that [redacted] specialists with his qualifications are rare, will enable him to develop "novel applications of [redacted] to improve [redacted] efficiency, develop [redacted], and reduce the cost of [redacted] . . ." Although [redacted] discusses the Petitioner's educational background, publication history, memberships, awards, and accomplishments while working as a contractor for [redacted] including the salary he earned, he does not offer specific examples of how the Petitioner's work and research pertaining to [redacted] has generated positive interest among relevant parties, has been utilized in the fields of aerospace engineering, [redacted], and [redacted] or otherwise represents a record of success in his field.

On appeal, the Petitioner points to letters that he asserts were not properly considered by the Director. For example, a letter from [redacted] principal engineer and project lead from the [redacted] department at [redacted] stated that [redacted] continues to use the Petitioner's novel techniques in [redacted] to model the [redacted] hot gas exhaust flow path. Regarding his use of [redacted] to solve the [redacted] issue, the Petitioner asserts that the Director improperly disregarded a letter from [redacted] Director of Engineering at [redacted] who stated that the Petitioner's "solution has been incorporated into all new [redacted] designs at [redacted] to eliminate the [redacted] issue." While it appears that the Petitioner's prior research proved beneficial for these companies with regard to the specific research projects to which he was assigned, the writers did not provide specific examples indicating that the Petitioner's solutions or techniques have affected the aerospace or aerodynamics industry, have served as an impetus for progress or generated positive discourse in his field, or otherwise represents a record of success or progress rendering him well positioned to advance his proposed endeavor.

As it relates to the citation of the Petitioner's work, the Petitioner submitted information from Google Scholar indicating that he has published five articles, two of which garnered 10 and 2 citations, respectively. The Petitioner does not specify how many citations for each of his two cited articles

were self-citations by him or his coauthors. Nor does the Petitioner offer comparative statistics showing the significance of this level of citation within his field.

The Petitioner provided an article from the *Journal of Informetrics* titled “Publication rate expressed by age, gender and academic position – A large scale analysis of Norwegian academic staff” as well as a 2018 report by the U.S. National Science Board regarding baseline citation rates and percentiles by year of publication for various research fields, including “Engineering & Technology” as well as publication rates for professors, associate professors, post-doctoral researchers, and Ph.D. students. Although the Petitioner asserts that based on the statistics provided in these documents, his publication output “scales better” than associate professors and his peers, he does not demonstrate how any of the cited material provides comparable citation statistics that can be used as a basis for comparison. Given that the article from the *Journal of Informetrics* investigates “the publication rate of *Norwegian* university researchers” (emphasis added), it is unclear how this document provides a proper analysis of his citation record or otherwise sets forth a comparable basis for comparison. Here, the Petitioner has not demonstrated that the number of citations received by his published articles reflects a level of interest in his work from relevant parties sufficient to meet *Dhanasar*’s second prong.

The Petitioner also refers to our non-precedent decisions concerning individuals who were approved for a national interest waiver despite having low or insignificant citation statistics with regard to their published works. These decisions were not published as precedents and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Moreover, the Petitioner has provided no evidence that the facts in these non-precedent decisions are similar to those in the instant petition.

The record also includes examples of articles which cited to the Petitioner’s work.<sup>4</sup> For instance, he presented an article, titled [REDACTED] (2014 *Journal of Physics Conference Series* [REDACTED]), in which the authors cited to the Petitioner’s 2013 paper co-authored by [REDACTED] and [REDACTED] titled [REDACTED]

[REDACTED] The Petitioner, however, only submitted page one and page nine of the article; as a result, we cannot determine the extent or the manner in which the Petitioner’s paper was cited, nor can we determine how many other papers or external sources the authors cited, or how the authors differentiated the Petitioner’s paper from the various other sources they cited. Other articles submitted similarly are likewise incomplete or do not distinguish the Petitioner’s paper from the various other sources cited in the respective articles.

Additionally, as it relates to the Petitioner’s education, while his master’s degree and Ph.D. from the [REDACTED] and his specialized foreign degrees in engineering render him eligible for the underlying EB-2 visa classification, he has not shown that his academic accomplishments by themselves are sufficient to demonstrate that he is well positioned to advance his proposed endeavor. In *Dhanasar*, the record established that the petitioner held multiple graduate degrees including “two master of science degrees, in mechanical engineering and applied physics, as well as a Ph.D. in engineering.” *Id.*

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<sup>4</sup> Although we discuss representative sample articles here, we have reviewed and considered each one.

at 891. We look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and education is merely one factor among many that may contribute to such a finding.

Regarding his peer review activity, the Petitioner provided evidence demonstrating that he reviewed technical papers submitted at the American Society of Mechanical Engineers (ASME) [ ] and the ASME [ ] conferences. The Petitioner, however, has not offered evidence demonstrating that his occasional participation in the widespread peer review process represents a record of success in his field or that it is otherwise an indication that he is well positioned to advance his research endeavor.

The record demonstrates that the Petitioner has conducted, published, and presented research during his graduate studies at [ ] and his professional career but he has not shown that this work renders him well positioned to advance his proposed [ ] research. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not sufficiently demonstrated that his published and presented work in the area of [ ] has served as an impetus for progress in the aerospace engineering field or that it has generated substantial positive discourse in the aerodynamics industry. Nor does the evidence otherwise show that his work constitutes a record of success or progress in advancing research relating to [ ] applications. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

### C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for a waiver due to the impracticality of labor certification, his expertise in the field, and the importance of his research. However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

## III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.